

April 18, 2012

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS – SECY-11-0155 – PROPOSED
CHANGES TO THE ENFORCEMENT POLICY ASSOCIATED
WITH CONSTRUCTION ACTIVITIES

The Commission has approved the proposed revision to the NRC's Enforcement Policy and the associated *Federal Register* Notice (FRN), subject to the changes and comments noted below.

Section 3.9, "Violations Involving Certain Construction Issues," should be clarified to emphasize that this section is not intended to limit NRC's enforcement options. The staff should clarify that this special policy regarding willfulness, applies only to the failure to meet the current licensing basis during the period of the agency's review of the licensee's submittal. The staff should note that other aspects of the licensee's conduct associated with the violation may be assessed for willfulness as is normally done under the current policy. In addition, Section 3.9 should include treatment of non-conformance issues for Part 50 Construction Permit holders and the use of enforcement discretion prior to § 50.57 operations.

The FRN should be corrected to have the revised policy signed out by the Secretary of the Commission. The revised policy language that reflects this SRM should be provided to the Commission 5 business days prior to submitting the FRN to the Office of the Federal Register for publication.

The staff should continue to solicit stakeholder feedback on future revisions of the enforcement policy. This will be particularly important as staff continues its work toward developing the Changes during Construction (CdC) process.

Prior to publication, the staff should make the following changes to the *Federal Register* notice:

- a. On page 7, item 6., paragraph 2, revise line 3 to read ' ... criterion 1 to ~~consistently communicate to Policy users the Policy's intent~~ reflect NRC's goal of promoting early identification of deficient conditions by licensees, even at the early stage when the licensees' corrective action programs have not been demonstrated to be adequate.'
- b. On page 7, item 6., paragraph 3, revise line 4 to read ' ... programs at power operating'

Prior to publication, the staff should make the following changes to the Analysis of Comments:

- a. On page 2, Item 4., in the Response, revise line 2 to read '... revision to the **Policy** will'
- b. On page 2, Item 4., in the Response, revise lines 8 through 10 to read '... is not **an** attempting to impose ... is intended **ed**ing to clarify'
- c. On page 3, 1st full paragraph, revise lines 1 and 2 to read '... NRC staff **shares** ~~agrees with~~ the commenter's **interest in** ~~intent to simplify~~ing the'
- d. On page 4, 1st full paragraph, revise lines 1 and 2 to read '... acknowledges ~~the commenter's statement that the CdC process is not yet in place, and that the effectiveness and flexibility of the~~ **CdC** process have not **yet** been'

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR